

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

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U.S. DISTRICT COURT
DISTRICT OF MASS.

JOHANZ X. SANTOS, ppa, DENISE)
COLON, Individually, JESUS SANTOS,)
Plaintiffs)

VS.)

BOB'S DISCOUNT FURNITURE,)
REGENT HOME DELIVERY,)
AGNILIZ ACOSTAS, RAUL SANTOS,)
Defendants)

C.A. NO.: 03-cv-12210-MAP

MEMORANDUM IN SUPPORT OF MOTION OF THE
DEFENDANT, BOB'S DISCOUNT FURNITURE,
PURSUANT TO LOCAL RULE 37

Pursuant to Local Rule 37.1, the Defendant, Bob's Discount Furniture, states the following:

1. A Discovery Conference was held on February 18, 2005 at approximately 11:15 telephonically in which the Plaintiff's attorney, David Angueira, was present and the Defendant's attorney, Richard F. Faille, was present on the telephone call. The Defendant had requested some times and dates for the out-of-state Plaintiffs to come to Massachusetts to be deposed. At that time, the Plaintiff's attorney readily agreed to have the parents of the minor child come to be deposed but refused to have the minor Plaintiff deposed. The reason stated for that was that the child was of such an age that he believed that the proceedings would be too traumatic on the minor child. The only issue before the Court is whether or not the Defendant has the right to depose the minor child.

2. This is a case where the minor ran in front of a parked truck controlled by the Defendant, Bob's Discount Furniture. After running out in front of the truck the Plaintiff ran

onto a street and was struck by a motor vehicle. The claim of the Plaintiff is that the Defendant's truck was illegally parked and therefore caused the Plaintiff injury.

3. The only issue presented is whether or not the Defendant is entitled to take the deposition of the minor Plaintiff.

POSITION

4. It is the position of the Defendant that it is entitled to take the deposition of the minor Plaintiff. A real and true issue exists as to the minor's capacity to understand certainly at issue in this case is the comparative negligence of Johanz Santos.

"Restatement, Second, Torts

§ 283 A. Children

If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances."

Without having the opportunity to take the deposition of the minor Plaintiff it is impossible for the Defendant to judge the reasonableness of his conduct and compare it to persons like age, intelligence and experience under like circumstances. There is no good reason why the minor should not be required to attend his deposition.

If the Plaintiff contends that such testimony would be too traumatic for the minor then the minor's testimony should be precluded at the trial of this matter.

THEREFORE, the Defendant, Bob's Discount Furniture, moves that the Court order the minor Plaintiff, Johanz Santos, to attend his deposition.

Johanz Santos was born September 23, 1994.

CERTIFICATION

The provisions of Local Rule 37.1 have been complied with.

THE DEFENDANT,
BOB'S DISCOUNT FURNITURE
By Its Attorney

A handwritten signature in black ink, appearing to read "Richard F. Faille", written over a horizontal line.

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